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176213  
SA  
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October 7, 2005

shudson@regstaff.sc.gov

**VIA HAND DELIVERY**

Charles L.A. Terreni, Esquire  
Chief Clerk/Administrator  
**South Carolina Public Service Commission**  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

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SOUTH CAROLINA  
PUBLIC SERVICE  
COMMISSION

Re: Application of Duke Energy Corporation for Authorization to Enter into  
Business Combination Transaction with Cinergy Corporation  
**Docket No. 2005-210-E**

Dear Mr. Terreni:

We are pleased to enclose for filing two Stipulations in the above-referenced matter. These Stipulations settle all issues among the parties within this docket and no outstanding issues remain. Fifteen (15) copies of each Stipulation are enclosed. Also enclosed are twenty-five (25) copies of Ms. Ellen Ruff's testimony. Please date stamp the extra copy of each and return them to me via our courier. Also please know that Ms. Ruff will be available during the hearing to support the Stipulations and answer any questions from the Commission.

We have served same on all parties of record and have enclosed a Certificate of Service to that effect.

With best regards,

*Shannon Bowyer Hudson*

Shannon Bowyer Hudson, Esquire  
Office of Regulatory Staff

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SBH/pkr  
Enclosures

cc: Paul R. Newton, Esquire (w/encl)  
William F. Austin, Esquire (w/encl)  
Richard L. Whitt, Esquire (w/encl)  
Frank R. Ellerbe, Esquire (w/encl)  
Bonnie D. Shealy, Esquire (w/encl)  
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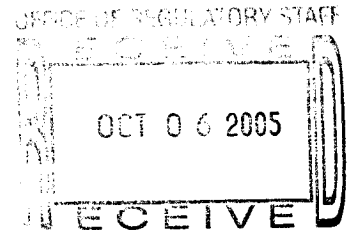
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COMMISSION

Application of Duke Energy Corp.  
For Authorization to Enter into  
Business Combination Transaction  
With Cinergy Corporation

October 7, 2005  
Columbia, South Carolina

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2005-210-E



In Re: )  
 )  
Application of Duke Energy )  
Corporation for Authorization to )  
Enter into a Business Combination )  
Transaction with Cinergy )  
Corporation )  
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STIPULATION

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PUBLIC SERVICE  
COMMISSION

WHEREAS Intervenors The Electric Cooperatives of SC, Inc., Central Electric Power Cooperative, Inc. and Saluda River Electric Cooperative (herein collectively "Cooperatives") have petitioned to intervene in the captioned proceeding stating their intent to protect their interests in connection with the proposed merger being considered in this docket; and

WHEREAS Duke Energy Corporation ("Duke") has opposed the intervention of the Cooperatives; and

WHEREAS the Cooperatives and Duke have reached agreement on certain items as set forth below in order to resolve matters in dispute between them in this docket.

NOW THEREFORE, the Cooperatives and Duke agree to the following:

1. Duke agrees that its transmission system in the state of South Carolina will be operated and maintained in a safe and reliable manner.
2. In accordance with applicable FERC procedures, Duke will consent to the anticipated assignment of the following agreements from New Horizon Electric Cooperative Inc. to its designee: Service Agreement for Network


Integration Transmission Service dated October 30, 2000, as amended and Network Operating Agreement dated October 30, 2000, as amended.

3. Duke agrees that it will support the establishment of a transmission planning process similar to the planning process underway in North Carolina which is sponsored by the North Carolina Utilities Commission that will provide a meaningful opportunity for stakeholders such as Cooperatives to participate in plans to meet the future needs of serving the native load in South Carolina.
4. Duke and Cooperatives agree that they will adhere to all provisions of the Territorial Assignment Act of the South Carolina Code as well as Act 179 of 2004. With respect to Act 179, the Cooperatives and Duke agree that the document titled "Statement" and dated November 17, 2003, attached as exhibit A to this stipulation is an accurate description of the intent and effect of that Act.
5. Duke states that it does not at present have any plans to seek confidential treatment of retail service contracts which it must file with the Public Service Commission. Duke acknowledges further that, should its plans change such that it does seek such treatment in the future, Cooperatives (including individual members of The Electric Cooperatives of South Carolina, Inc.) shall have the right to apply to the Public Service Commission to obtain the right to review such contracts pursuant to appropriate protective orders. Duke will not contest the standing of Cooperatives, including the individual members, to make such application.

6. Duke agrees to engage in good faith negotiations with the Cooperatives regarding the acquisition, joint ownership, operation and/or maintenance of transmission facilities owned by Duke. Any such negotiations shall commence after the closing of the Merger and any agreement reached by the Parties on such acquisition, joint ownership, operation and/or maintenance shall be subject to any required approvals including approvals required by the Federal Energy Regulatory Commission, the South Carolina Public Service Commission, and/or the North Carolina Utilities Commission.
7. Duke will withdraw its opposition to the intervention of Cooperatives in this docket and Cooperatives will not oppose the approval sought by Duke for its proposed merger with Cinergy Corp.
8. Duke shall pre-file the prepared direct testimony of Ellen T. Ruff, Group Vice President, Duke Power, Planning and External Relations, consistent with and in support of this Stipulation. The Parties agree to stipulate to such testimony so that the Commission may admit it into the record without objection or cross-examination by any of the Parties.
9. The Parties agree that Ms. Ruff's testimony and this Stipulation shall be sufficient to support the Commission's approval of Duke's application in this docket, and no other party may offer additional evidence.
10. Duke shall withdraw the pre-filed direct testimonies (including any exhibits) of Dr. Ruth G. Shaw, James E. Rogers, and Myron L. Caldwell filed on August 29, 2005.

11. This Stipulation contains the complete agreement of the Parties. There are no other terms and condition to which the Parties have agreed. All discussions among the Parties have been integrated into the terms of this Stipulation.
12. If the Commission should decline to approve the Stipulation in its entirety, then any party desiring to do so, may withdraw from the Stipulation without penalty, within three (3) days of receiving notice of the any such decision, by providing written notice of withdrawal via electronic mail to all parties in that time period.
13. This Stipulation shall be interpreted according to South Carolina Law.
14. Each party acknowledges its consent and agreement to this Stipulation by authorizing its counsel to affix his or her signature to this Stipulation where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the Stipulation. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages, combined with the body of this document constituting an original and provable copy of this Stipulation.

15. The commitments and agreements contained in this Stipulation are conditioned on the closing of the merger between Duke and Cinergy Corp.

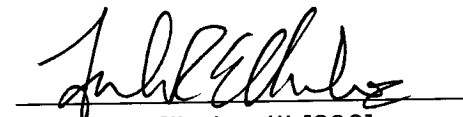
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Counsel for The Electric Cooperatives of  
SC, Inc., Central Electric Power  
Cooperative, Inc. and Saluda River  
Electric Cooperative

Date: October 6, 2005


**STATEMENT**  
**November 17, 2003**

The Electric Cooperatives of South Carolina, The Municipal Association of South Carolina, The South Carolina Association of Municipal Power Systems, Piedmont Municipal Power Authority, and the Investor-Owned Utilities (SCANA, Progress Energy, and Duke Power) submit this memorandum to explain the intended effect of the Electric Cooperatives Act of 2004.

**1. PROCEDURAL BACKGROUND**

In late 2001, the Electric Cooperatives ("cooperatives") approached Senator McConnell and Senator Moore regarding the current legislative limitations placed upon the cooperatives by their 1930s-era empowering act. Under the cooperatives' enabling legislation, cooperatives may be organized for the purpose of supplying electricity in rural areas. Section 33-49-20(1) of the South Carolina Code defines a "rural area" as "any area not included within the boundaries of an incorporated or unincorporated city, town, village or borough having a population in excess of 2,500 persons." In other words, except for certain circumstances, a cooperative may not extend service to a premise in a town with a population over 2,500. This is known as the "Hamlet Rule" or the "2500 Rule."

The cooperatives prepared a proposal addressing the cooperatives' Hamlet Rule concerns. Shortly thereafter, the cooperatives provided proposed legislation eliminating the rural designation and repealing the Hamlet Rule. At the direction of Senators McConnell and Moore, Senate Judiciary Committee staff attorney Mike Couick asked for the investor-owned utilities' ("IOUs") and municipalities' input to ensure that all electric suppliers were able to address their concerns with how the cooperative proposal may or may not affect current service rights. Specifically, the electric suppliers were asked to propose language that would address their concerns regarding the cooperatives' proposed Hamlet Rule legislation. Over the past year, representatives of the electric suppliers and the municipalities have met numerous times to compare and compromise legislative





proposals. Despite the electric suppliers encountering several impasses concerning compromise language at the early stages of this project, the electric suppliers have agreed on a legislative proposal that adequately addresses all electric suppliers' concerns.

## **2. OVERVIEW**

The purpose of the bill is to alter the legal powers of electric cooperatives so as to remove the present limitation on service rights of cooperatives outside of rural areas while at the same time protecting the service rights of IOUs and municipally-owned electrical utilities ("electric cities"). The bill would: (1) eliminate the concept of "rural areas" in connection with the service rights of cooperatives; (2) change the name "rural electric cooperative" to "electric cooperative;" (3) permit cooperatives to serve new customers within their previously assigned territory or previously unassigned territory after annexation or incorporation into a municipality, subject to the consent of the municipality; and (4) protect the rights of IOUs to serve within their previously assigned territory or previously unassigned territory after annexation or incorporation into a municipality, subject to the consent of the municipality. The bill would not empower cooperatives to serve new customers after annexation or incorporation into an electric city unless expressly approved by the municipality and its commission or board of public works, if any. Additionally, the bill would not alter existing cooperative service rights with regard to annexations occurring prior to the effective date of this bill. The constitutional and statutory powers of municipalities would be expressly protected, but not enlarged.

## **3. THE CONTENTS OF THE BILL**

Under current law, cooperatives are restricted from serving in municipalities of greater than 2,500 population, subject to specified exceptions, by operation of the existing

definition of "rural areas." The bill would abolish the "rural" designation and the 2,500-population limit, thus abolishing the Hamlet or 2,500 Rule. The bill conveys equal status relative to the service rights of electric cooperatives and IOUs to serve new premises in future annexed or incorporated areas. After annexation or incorporation, a cooperative would have the authority to serve in areas that had previously been assigned to it by the Public Service Commission pursuant to the Territorial Assignment Act, subject to the consent of the municipality. A cooperative would not have authority to serve in an area which had been assigned to an IOU prior to annexation or incorporation. An IOU would no longer have the authority to serve in territory that had been assigned to a cooperative prior to annexation or incorporation. Both cooperatives and IOUs would have the authority to serve in areas that had been unassigned prior to annexation or incorporation, subject to the consent of the municipality. As in the current statute, a cooperative has statutory-implied consent, except in electric cities, to extend new service in the permitted parts of the newly annexed or incorporated area until the municipality acts.

The bill protects current service rights in municipal limits as they exist on the date of the enactment of this bill. If an electric supplier can legally serve within the existing municipal limits on the effective date of the Act, the Act does not affect such rights. The bill does not affect existing service to any premises by an IOU, cooperative, or electric city. The bill allows an electric supplier to take over service to premises already being served by another electric supplier only under the limited circumstances and subject to procedures existing in current law.

#### **4. IMPACT OF CORRIDORS**

Under S.C. Code Ann. § 58-27-620(1)(d), electric suppliers have the exclusive right

to serve within 300 feet of their electric lines as such lines existed on July 1, 1969, in areas outside of municipalities. Where existing electric lines of electric suppliers parallel or overlap, special rules apply. Those areas within 300 feet of such lines are called corridors.

Under this bill, the service rights of an electric supplier within its previously assigned territory after annexation or incorporation would include all corridors lying within the boundaries of the assigned territory as if the corridors were a part of the assigned territory. As under present law, corridor rights under the Territorial Assignment Act will have no effect after annexation or incorporation.

## **5. OTHER PROVISIONS**

(1) The bill would not affect the statutory powers of the Public Service Authority or transmission cooperatives. (2) The bill is prospective in application. The change in the powers of cooperatives and IOUs only apply within areas annexed or incorporated after the effective date of the bill. (3) The bill would exempt electric cities from its application by withholding from cooperatives any legal authority to provide any new service within such cities after annexation or incorporation unless expressly permitted to do so by ordinance of the municipal council and contractual consent of the board or commission of public works, if any. (4) The bill expressly recognizes and protects, but does not expand, the constitutional, home rule, and police powers of municipalities. The bill does not directly restrict municipal authority but only would restrict the powers of cooperatives and IOUs to accept service rights in certain annexed or newly incorporated areas. (5) The bill contains a non-severability clause. If any part of the bill is found unconstitutional, the entire bill fails.

## **6. CONCLUSION**

It is the collective opinion of the interested parties that the enactment of this bill

would serve the public interest by modernizing the statutory method established for service rights for electric suppliers and establishing parity of rights after annexation for electric cooperatives and IOUs while at the same time protecting the service rights of electric cities and preserving the constitutional and statutory powers of all municipalities.

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**BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**In Re:**

**Application of Duke Energy Corporation )  
for Authorization to Enter into a )  
Business Combination )  
Transaction with Cinergy Corporation )**

**Docket No: 2005-210-E**

**DIRECT TESTIMONY**

**OF**

**ELLEN T. RUFF**

**FOR DUKE POWER, A DIVISION OF DUKE ENERGY CORPORATION**

**October 6, 2005**

**DIRECT TESTIMONY OF**  
**ELLEN T. RUFF**  
**FOR DUKE POWER, A DIVISION OF DUKE ENERGY CORPORATION**  
**PSCSC DOCKET NO. 2005-210-E**

**I. INTRODUCTION**

1 Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH DUKE  
2 POWER.

3 A. My name is Ellen T. Ruff, and my business address is 526 South Church Street,  
4 Charlotte, North Carolina. I am Group Vice President of Planning and External  
5 Relations for Duke Power, a division of Duke Energy Corporation ("Duke  
6 Energy") and am responsible for leading Duke Power's strategic planning,  
7 compliance and environmental, health and safety strategy efforts. I have overall  
8 accountability for Duke Power's state and federal rates and regulatory affairs.

9 Q. PLEASE STATE BRIEFLY YOUR EDUCATION, BACKGROUND AND  
10 PROFESSIONAL AFFILIATIONS.

11 A. I am a graduate of Simmons College with a Bachelor of Arts in Business. I also  
12 have a Juris Doctor degree from the University of North Carolina at Chapel Hill.  
13 I am a member of the North Carolina State Bar and the Mecklenburg County and  
14 American Bar Associations.

15 Q. PLEASE DESCRIBE YOUR BUSINESS BACKGROUND AND  
16 EXPERIENCE.

1 A. I joined Duke Power in 1978 as an attorney in the Legal Department. I was  
2 named Vice President and General Counsel of Electric Operations following the  
3 creation of Duke Energy in 1997. I was named Vice President and General  
4 Counsel of Corporate, Gas and Electric Operations in January 1999 and Senior  
5 Vice President and General Counsel of Duke Energy Corporation in February  
6 2001. I was appointed Senior Vice President of Asset Management for Duke  
7 Power in August 2001. I became Senior Vice President of Power Policy and  
8 Planning in February 2003 and Group Vice President of Power Policy and  
9 Planning in March 2004. I was named to my current position in March 2005.

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11 A. Duke Energy has applied to the Commission for authority to enter into a business  
12 combination with Cinergy Corp. The purpose of my testimony is to provide the  
13 policy and strategic reasons why Duke Energy has chosen to enter into the Merger  
14 and to discuss the benefits of the Merger for all of our stakeholders. In addition,  
15 I will discuss the Stipulations reached among the Office of Regulatory Staff  
16 ("ORS"), South Carolina Energy Users Committee ("SCEUC"), and Duke  
17 Energy, and among the Electric Cooperatives of South Carolina, Inc., Central  
18 Electric Power Cooperative, Inc., Saluda River Electric Cooperative, Inc.,  
19 (collectively, the "Cooperatives") and Duke Energy.

20 Q. WHAT ARE THE OVERALL BENEFITS OF THE MERGER TO DUKE  
21 ENERGY, ITS CUSTOMERS AND THE STATE OF SOUTH CAROLINA?

22 A. The Merger will benefit Duke Energy and its customers by creating greater  
23 diversity and depth of resources, service areas and customers; increasing its

1 efficiency; increasing its financial flexibility; reducing its operating costs by  
2 integrating two companies; and increasing its size in order to withstand possible  
3 hostile takeovers.

4 Q. PLEASE DESCRIBE THE BUSINESS COMBINATION BETWEEN DUKE  
5 AND CINERGY.

6 A. On May 8, 2005, Duke Energy and Cinergy entered into an Agreement and Plan  
7 of Merger, which was amended on July 11, 2005 to include provisions allowing  
8 for the rollover of the respective companies' dividend retirement plans ("Merger  
9 Agreement"). Under the Merger Agreement, the proposed Merger will be  
10 accomplished via an all-stock transaction. Through a series of mergers,  
11 conversions, and reorganizations, Duke Power, Duke Capital LLC, Duke Energy  
12 Shared Services, LLC and Cinergy will become wholly-owned subsidiaries of a  
13 new Delaware holding company to be named "Duke Energy Corporation." I will  
14 refer to the new Duke Energy holding company herein as the "New Duke  
15 Energy." Holders of Duke Energy common stock will receive New Duke Energy  
16 common stock on a one-for-one basis, and holders of Cinergy common stock will  
17 receive 1.56 shares of New Duke Energy common stock for each share of Cinergy  
18 common stock held. After completion of the Merger, Duke Energy shareholders  
19 will own approximately 76% of the New Duke Energy holding company stock,  
20 and Cinergy shareholders will own approximately 24% of the New Duke Energy  
21 holding company stock.

22 Q. PLEASE DESCRIBE CINERGY AND ITS OPERATIONS.



1 A. Cinergy is a Delaware corporation headquartered in Cincinnati, Ohio and is a  
2 leading energy company in the Midwest. Its principal direct and indirect  
3 subsidiaries are (i) PSI Energy, Inc. ("PSI"), a vertically integrated electric utility  
4 serving a significant portion of the retail electric requirements in the State of  
5 Indiana, (ii) The Cincinnati Gas & Electric Company ("CG&E"), a utility  
6 engaged in the production, transmission, distribution, and sale of electricity and  
7 the sale and transportation of natural gas in the southwestern portion of Ohio and  
8 (iii) The Union Light, Heat and Power Company ("ULH&P"), a wholly-owned  
9 subsidiary of CG&E and a vertically integrated utility serving a portion of the  
10 retail electric and gas requirements in Northern Kentucky. Collectively, PSI,  
11 CG&E and ULH&P serve approximately 1.5 million retail electric customers and  
12 500,000 retail gas customers. In addition to regulated utility operations,  
13 Cinergy's subsidiaries are involved in wholesale power generation and sales,  
14 energy marketing and trading, and other energy-related businesses. Cinergy does  
15 not have any operations in North Carolina or South Carolina.

16 Cinergy had \$15 billion in assets, approximately \$4.7 billion in annual revenues  
17 and net income of \$400 million as of December 31, 2004, and ranked number 412  
18 on Fortune Magazine's 2005 ranking of the 500 largest publicly traded U.S.  
19 Companies.

20 Cinergy's electric utilities operate in regulatory environments that are similar to  
21 Duke Power's. Like Duke Power, the Cinergy electric utilities have a track  
22 record of strong customer service and commitment to the communities where they

1 conduct business, including a proactive support of charitable, educational and  
2 economic development organizations.

3 Q. WHAT WERE THE STRATEGIC OBJECTIVES THAT LED DUKE ENERGY  
4 TO PURSUE A MERGER WITH CINERGY?

5 A. We entered into the Plan of Merger to build a stronger company. The Merger  
6 will create a stronger platform for our regulated business by increasing its scale  
7 and scope. Our increased size will position us to take advantage of further  
8 consolidation opportunities in both the franchised electric and merchant energy  
9 business. After the combination, Duke Energy's electric and gas businesses  
10 would each be large enough to stand alone - - giving us the flexibility to separate  
11 them in the future if we determine that such a move would create more value.

12 The transaction will add value to Duke Energy with higher earnings after the first  
13 full year of operation. The benefits will increase further in future years through  
14 the realization of cost efficiencies. These efficiencies and management  
15 commitment to capture them assure that the combined company will be able to  
16 offer attractive energy prices to its retail customers, competitive prices and  
17 services in wholesale businesses and sustainable returns to attract the capital  
18 needed to assure reliability and expand.

19 Cinergy offers a strategic fit of assets and skills to meet our strategic objectives.  
20 In addition, Cinergy's management is experienced, highly capable and shares a  
21 vision of the future of the energy business that is very similar to Duke Energy's.  
22 Cinergy's management is experienced with regulatory utility issues and its track

1 record with its previous merger is excellent. Duke Energy and Cinergy also share  
2 a common vision on the importance of environmental stewardship.

3 Q. DESCRIBE, GENERALLY, ANY ADDITIONAL BENEFITS OF A MERGER  
4 BETWEEN DUKE ENERGY AND CINERGY.

5 A. The combination of Duke Energy and Cinergy creates a larger, more stable  
6 company. The Merger will also allow us to reduce risk to the regulated  
7 operations as a whole from exposure to local conditions by adding diversity of  
8 service areas, climates, economic and competitive conditions. Once combined,  
9 Duke Energy will operate one of the five largest electric businesses in the United  
10 States on a stand-alone basis, and combined with the gas operations will be one of  
11 the largest diversified utility and gas operations in North America.

12 Had the Merger occurred on January 1, 2004, the combined company would have  
13 had pro forma revenues of over \$27.2 billion and pro forma income from  
14 continuing operations of approximately \$1.6 billion for that calendar year. As of  
15 close of the stock market on May 6, 2005, the New Duke Energy would have had  
16 market capitalization of \$36 billion. It also would have had pro forma assets  
17 totaling more than \$76 billion as of March 31, 2005. The significant synergies  
18 created by the Merger will lower the overall cost structure of the combined  
19 company. These cost savings should permit lower future rates than would  
20 otherwise have been necessary on a stand-alone basis for either of the two  
21 companies. In summary, the combination of Duke Energy and Cinergy will  
22 create a diversified company with increased financial strength and flexibility,  
23 greater efficiencies, and lower costs.

1 Q. IN YOUR OPINION, WILL THIS BUSINESS COMBINATION WITH  
2 CINERGY ENHANCE DUKE POWER'S ABILITY TO SERVE SOUTH  
3 CAROLINA RETAIL ELECTRIC CUSTOMERS?

4 A. Yes, both directly and indirectly. First, the economies created by the scale and  
5 scope of the larger enterprise will enable Duke Power to offer lower rates than  
6 otherwise would have been possible. Second, the Merger will directly enhance  
7 our ability to serve our customers by providing even greater depth and diversity of  
8 human resources experience to continue Duke Power's strong history of customer  
9 service. For example, the broader employee base located in a larger geographic  
10 area will provide all retail customers access to greater resources in the event of  
11 severe weather or other uncontrollable outages or emergencies. This Merger will  
12 allow the New Duke Energy utility operating companies to develop "best  
13 practices" drawing on the experience of Duke Power and the Cinergy operating  
14 companies. The Merger will indirectly enhance our ability to serve all of our  
15 customers by making us a stronger, more sustainable company, better able to  
16 provide stable and reliable services at reasonable rates for South Carolina  
17 customers under any market or economic condition.

18 Q. IS THIS TRANSACTION WITH CINERGY JUSTIFIED BY THE PUBLIC  
19 CONVENIENCE AND NECESSITY?

20 A. Yes. The Merger will not adversely affect retail rates for Duke Power's South  
21 Carolina customers, because it does not increase our cost of service, but in fact is  
22 projected to decrease it. Duke Power is sharing with South Carolina retail  
23 customers the net savings associated with the merger through a first-year rate

1 decrement as discussed below. The Merger also will not adversely affect Duke  
2 Power's quality of retail service. In fact, quality of service should tend to  
3 improve as a result of the Merger by giving Duke Power access to the best  
4 practices of other well-run utilities in the Cinergy group. The Merger will not  
5 involve any sale, assignment, pledge, transfer or lease of Duke Power's public  
6 utility franchise, and the conversion of Duke Power to a limited liability company  
7 will have no effect on the Commission's jurisdiction. The New Duke Energy and  
8 Duke Power headquarters will remain in Charlotte, and Duke Power customers in  
9 the Carolinas will continue to have the same local presence and access to their  
10 electric utility that they have come to expect. In addition, in an era of  
11 consolidation within the electric utility industry, the increased size of the New  
12 Duke Energy will enable Duke to withstand possible hostile takeovers more  
13 effectively and continue its strong history of dedication to the well being of the  
14 State of South Carolina.

15 For all the reasons discussed in my testimony, I believe that this combination is  
16 justified by the public convenience and necessity.

17 Q. HAS DUKE ENTERED INTO A STIPULATION WITH THE INTERVENORS?

18 A. Yes. On October 6, 2005, Duke Energy entered into a Stipulation with the ORS  
19 and the SCEUC (the "ORS/SCEUC Stipulation") resolving all issues those parties  
20 had with the Merger. On the same date Duke Energy entered into a separate  
21 Stipulation with the Cooperatives (the "Coop Stipulation") providing, among  
22 other things, for the Coops not to oppose the approval of the Merger and for Duke  
23 Energy to withdraw its opposition to the Coop's intervention in this docket. The

1 commitments and agreements contained in the Stipulations are conditioned on the  
2 closing of the Merger between Duke and Cinergy Corp.

3 Q. PLEASE DESCRIBE THE STIPULATION WITH THE ORS AND THE  
4 SCEUC IN GREATER DETAIL.

5 A. Duke Energy, the ORS, and the SCEUC have met and determined that a  
6 settlement of the issues would be in their best interests and in the public interest.  
7 The Stipulation provides that Duke Energy shall reduce its South Carolina retail  
8 base rates for a one year period by \$40 million, beginning with the second month  
9 following the close of the Merger. This rate reduction is conditioned on the  
10 Commission's approval of an accounting order that permits Duke Power to  
11 amortize the impact of this rate decrement over a period of five years, beginning  
12 with the year the decrement is implemented. The impact of the rate decrement,  
13 costs to achieve and cost savings allocated to South Carolina, shall be reflected in  
14 Duke's quarterly surveillance reports as realized. Importantly, the Stipulation  
15 also provides South Carolina with a "Most Favored Nation" status.

16 Q. WHAT IS THE "MOST FAVORED NATION" STATUS YOU REFERRED  
17 TO?

18 A. Following approval of the Merger by the utility commissions of North Carolina  
19 and Ohio, and approval of merger related affiliate agreements filed with the  
20 Indiana Commission, any sharing mechanisms pursuant to which merger savings  
21 are shared with retail customers will be reviewed to determine which state's retail  
22 customers will receive the largest percentage of the net merger savings to be  
23 achieved over the first five years after closing of the Merger.

1 Should the application of that percentage to the net savings allocable to South  
2 Carolina retail customers result in a greater savings sharing than \$40 million, then  
3 the South Carolina rate reduction would increase to match the application of that  
4 percentage to the South Carolina retail customers.

5 This is to ensure that South Carolina retail customers would not receive a rate  
6 reduction that is proportionately less than the other jurisdictions using this  
7 methodology. Under no circumstances will the application of this methodology  
8 cause the \$40 million share of the net savings to be reduced.

9 Q. WHAT OTHER MATTERS ARE ADDRESSED IN THE STIPULATION?

10 A. Following the close of the Merger, Duke Power shall transition its current pro  
11 forma capital structure used for quarterly surveillance reports to a pro forma  
12 capital structure consisting of 55% equity and 45% debt by December 31, 2007.  
13 The starting point for the transition shall be the equity percentage used in the most  
14 recent quarterly surveillance report filed in South Carolina prior to the closing of  
15 the Merger.

16 After December 31, 2007, the 55% equity and 45% debt capital structure shall  
17 remain in effect and be used in Duke Power's quarterly surveillance reports until  
18 changed by action of this Commission, either upon a general rate case, or petition  
19 by Duke Power, the ORS, or other parties. Duke Power will provide its actual  
20 capital structure in its quarterly surveillance reports filed with the Commission.

21 Q. DOES THE STIPULATION ADDRESS HOW CERTAIN ITEMS RELATED  
22 TO THE MERGER WILL BE TREATED FOR RATEMAKING PURPOSES?

1 A. Yes. Direct expenses associated with costs to achieve the Merger will be  
2 excluded from retail cost of service for rate making purposes. Any increase in  
3 debt rates, because of downgrading as a result of the Merger, shall be pro formed  
4 out for retail rate making.

5 Q. IS ADVANCE SOUTH CAROLINA ADDRESSED IN THE STIPULATION?

6 A. Duke agrees to extend its sharing of non-firm bulk power marketing profits  
7 through Advance South Carolina, LLC for an additional three years or until a  
8 general rate case, whichever occurs first. The additional three-year time period  
9 shall include profits realized through December 31, 2010.

10 Q. ARE THERE ANY OTHER MATTERS THAT WERE CONSIDERED?

11 A. Yes. Duke agreed that, with respect to its South Carolina operations, it will  
12 comply with the Code of Conduct filed with the North Carolina Utilities  
13 Commission ("NCUC").

14 Q. PLEASE DESCRIBE THE STIPULATION ENTERED INTO WITH THE CO-  
15 OPS.

16 A. The parties entered into discussions with the objective of resolving matters in  
17 dispute between them and such discussion resulted in a Stipulation that resolved  
18 these matters. Specifically, the Stipulation provides that:

- 19 • Duke's transmission system in South Carolina will be operated in a safe  
20 and reasonable manner.
- 21 • Duke will consent, subject to applicable FERC procedures, to the  
22 assignment of the following agreements from New Horizon Electric  
23 Cooperatives to its designee: a Service Agreement for Network Integration



1 Transmission Service dated October 30, 2000, as amended and a Network  
2 Operating Agreement dated October 30, 2000, as amended.

- 3 • Duke agrees to support the establishment of a transmission planning  
4 process similar to the planning process underway in North Carolina, which  
5 is sponsored by the NCUC.
- 6 • The parties agree that they will adhere to all provisions of the Territorial  
7 Assignment Act of the South Carolina Code and Act 179 of 2004 of the  
8 South Carolina Code and the parties agree that the document titled  
9 “Statement,” dated November 17, 2003, and which is attached to the  
10 Stipulation, is an accurate description of the intent and effect of that Act.
- 11 • Should Duke seek confidential treatment of a retail service contract that it  
12 is required to file with this Commission, Duke agrees that the Electric  
13 Cooperatives shall have the right to apply to the Commission to obtain the  
14 right to review such contracts pursuant to appropriate protective Orders  
15 and that Duke will not contest the standing of cooperatives to make such  
16 an application.
- 17 • Duke agrees to engage in good faith negotiations with the Cooperatives  
18 regarding the acquisition, joint ownership, operation and/or maintenance  
19 of transmission facilities owned by Duke. Any such negotiations shall  
20 commence after the closing of the Merger and any agreement reached by  
21 the Parties on such acquisition, joint ownership, operation and/or  
22 maintenance shall be subject to any required approvals including

1                   approvals required by the Federal Energy Regulatory Commission, the  
2                   South Carolina Public Service Commission, and/or the NCUC.

3    Q.   DO YOU BELIEVE THAT THESE STIPULATIONS ARE IN THE PUBLIC  
4           INTEREST?

5    A.   Yes. The parties have entered into these Stipulations in good faith and believe that  
6           they are in the public interest based on the above and should be approved. The  
7           Stipulations reflect a balancing of many important interests affected by Duke's  
8           Application in this docket and the Parties recognize that these Stipulations, if  
9           adopted by the Commission, would represent a fair, reasonable and full resolution  
10          of all issues in the above-captioned proceeding. I therefore recommend that the  
11          Commission approve these Stipulations and Duke Energy's application in this  
12          docket.

13   Q.   DOES THIS COMPLETE YOUR DIRECT TESTIMONY?

14   A.   Yes, it does.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO: 2005-210-E**

**October 6, 2005**

RECEIVED  
2005 OCT -7 PM 2:41  
SC PUBLIC SERVICE  
COMMISSION

IN RE:

Application of	)	
Duke Energy Corporation for	)	<b>STIPULATION</b>
Authorization to Enter into a	)	
Business Combination Transaction	)	
with Cinergy Corporation	)	

This Stipulation sets forth the agreement among the Office of Regulatory Staff of South Carolina ("ORS"), South Carolina Energy Users Committee ("SCEUC"), and Duke Energy Corporation ("Duke"), collectively referred to as the "Parties", as to an appropriate resolution of issues in the above-captioned proceedings. The above-captioned proceeding has been established by the Public Service Commission of South Carolina ("Commission") pursuant to the Application of Duke for authorization to enter into a business combination transaction with Cinergy Corp. (the "Merger"), which was filed with the Commission on July 15, 2005, in Docket No: 2005-210-E. The Parties have engaged in discussions to determine if a settlement of the issues would be in their best interests, and have each determined that their interests and the public interest would be best served by settling all issues pending in the above-captioned case under the terms and conditions set forth below.

The Parties will, as soon as possible after execution of this Stipulation, file it with the Commission, together with the prepared direct testimony of Ellen T. Ruff, Group Vice President, Duke Power, Planning and External Relations, and a request that the

Commission consider the Stipulation and such other matters as the Commission may determine at a hearing (presently scheduled for October 10, 2005 (the “Hearing”)).

The stipulated agreements are as follows:

1. Sharing of Net Merger Savings

A. Duke shall reduce its South Carolina retail base rates for a one year period by \$40 million beginning with the second month following the close of the Merger. The rate reduction shall be accomplished by a rate decrement rider to existing base rates for a one-year period on a per kWh basis.

B. Following approval of the Merger by the state commissions of North Carolina, and Ohio, and approval of the affiliate agreements filed with the Indiana Utility Regulatory Commission in connection with the Merger, any sharing mechanisms pursuant to which merger savings are shared with retail customers in each of these states will be reviewed to identify the utility whose electric retail customers will receive the largest percentage of the net merger savings to be achieved over the first five years after closing of the merger allocated to that utility. If the application of that percentage to the net savings allocable to South Carolina retail would result in a greater savings sharing than \$40 million, then the rate reduction described in Section 1.A. above for South Carolina retail customers will be increased to match the application of that percentage to the net savings allocable to South Carolina retail. Application of this methodology is intended to ensure that South Carolina retail customers receive the benefit of a “most favored nation” status with regard to the sharing of net merger savings among the states named above. In no event will the application of the methodology cause South Carolina’s \$40 million share of savings to be reduced.

- C. In addition to the \$40 million shared savings discussed above, any fuel savings allocable to South Carolina as a result of the Merger shall flow to retail customers through the South Carolina retail fuel clause.
  - D. The base rate reduction described in Sections 1.A and 1.B is conditioned on the Commission's approval and issuance of an accounting order ("Accounting Order") that permits Duke to amortize the impact of the merger savings rate decrement over a five year period beginning with the year the decrement is implemented. The Parties shall support Duke's request to the Commission for an Accounting Order.
  - E. The impact of the rate decrement, costs to achieve and cost savings allocable to South Carolina shall be reflected in Duke's quarterly surveillance reports as realized.
2. Following the close of the Merger, Duke shall transition its current pro forma capital structure used for quarterly surveillance reports to a pro forma capital structure consisting of 55% equity and 45% long-term debt by December 31, 2007. The starting point for the transition shall be the equity percentage used in the most recent quarterly surveillance report filed in South Carolina prior to the closing of the Merger.
3. After December 31, 2007, the 55% equity, 45% long-term debt capital structure shall remain in effect and be used in Duke's quarterly surveillance reports until changed by action of the Commission, either upon a general rate case, or petition by Duke, the ORS or other parties. The Company will include the actual capital structure of Duke for informational purposes in the quarterly surveillance reports.
4. Duke shall extend its sharing of non-firm Bulk Power Marketing profits through Advance SC LLC for an additional three years or until a general rate case, whichever occurs first. The additional three year time period shall include profits realized through December 31, 2010.

5. Direct expenses associated with costs to achieve the Merger shall be excluded from retail cost of service for ratemaking purposes. Duke shall bear the burden of proof to demonstrate in its first rate case after closing of the Merger that any capital costs associated with costs to achieve the Merger that Duke seeks to recover from South Carolina retail customers are to the benefit of South Carolina retail customers.
6. Any increase in debt rates because of downgrading as a result of the Merger shall be proformed out for retail ratemaking purposes.
7. For its South Carolina operations, Duke shall abide by its North Carolina Code of Conduct, including any Merger related amendments to the Code of Conduct approved by the North Carolina Utilities Commission.
8. Duke shall pre-file the prepared direct testimony of Ellen T. Ruff, Group Vice President, Duke Power, Planning and External Relations, in support of this Stipulation. The Parties agree to stipulate to such testimony so that the Commission may admit it into the record without objection or cross-examination by any of the Parties.
9. The Parties agree that Ms. Ruff's testimony and this Stipulation shall be sufficient to support the Commission's approval of Duke's application in this docket, and no other party may offer additional evidence.
10. Duke shall withdraw the pre-filed direct testimonies (including any exhibits) of Dr. Ruth G. Shaw, James E. Rogers, and Myron L. Caldwell filed on August 29, 2005.
11. The commitments and agreements contained in this Stipulation are conditioned on the closing of the merger between Duke and Cinergy Corp.

12. This Stipulation contains the complete agreement of the Parties. There are no other terms and condition to which the Parties have agreed. All discussions among the Parties have been integrated into the terms of this Stipulation.

13. This Stipulation reflects a balancing of many important interests affected by Duke's Application in this docket. The Parties recognize that this Stipulation, if adopted by the Commission, would represent a fair, reasonable and full resolution of all issues in the above-captioned proceeding. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission as in the public interest. The Parties agree to use their reasonable efforts to defend and support any Commission order approving this Stipulation.

14. This Stipulation shall not constrain, inhibit or impair any party's positions held in future proceedings. The Parties expressly agree that the positions taken in this Stipulation, the acceptance of the Stipulation, and their participation in the same shall have no precedential effect in any future proceeding involving any of the Parties. The Parties expressly reserve the right to assert any and all positions in future proceedings, even if contrary to a position taken in this stipulation.

15. If the Commission should decline to approve the Stipulation in its entirety, then any party desiring to do so, may withdraw from the Stipulation without penalty, within three (3) days of receiving notice of the any such decision, by providing written notice of withdrawal via electronic mail to all parties in that time period.

16. This Stipulation shall be interpreted according to South Carolina Law.

17. Each party acknowledges its consent and agreement to this Stipulation by authorizing its counsel to affix his or her signature to this Stipulation where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the Stipulation. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in

counterparts, with the various signature pages, combined with the body of this document constituting an original and provable copy of this Stipulation.



WE AGREE:

Representing and binding the Office of Regulatory Staff:

Shannon Bowyer Hudson

Shannon Bowyer Hudson

Office of Regulatory Staff

1441 Main Street, Suite 300

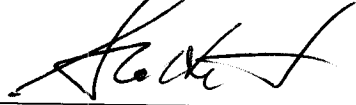
Columbia, South Carolina 29201

Phone: (803) 737-0889

Date: Oct. 5, 2005

WE AGREE:

Representing and binding the South Carolina Energy Users Committee:



\_\_\_\_\_  
Scott Elliott

Elliott & Elliott, P.A.

721 Olive Street

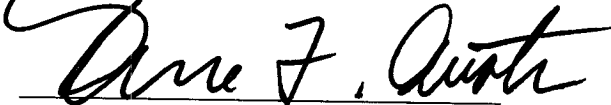
Columbia, South Carolina 29205

Phone: (803) 771-0555

Date: December 6, 2005

WE AGREE:

Representing and binding Duke Energy Corporation

A handwritten signature in black ink, appearing to read "Wm F. Austin", written over a horizontal line.

William F. Austin

Richard L. Whitt

Austin Lewis, and Rogers, P.A.

508 Hampton Street , Suite 300

Columbia, S.C. 29202

Phone: (803) 251-7443

Date: October 7, 2005